

FAIR DEBT COLLECTION PRACTICES ACT

OVERVIEW

The Fair Debt Collection Practices Act (FDCPA) was designed to eliminate abusive, deceptive, and unfair debt collection practices. The federal law also protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection.

The FDCPA applies only to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to the collection of corporate debt or to debt for business or agricultural purposes.

Examination Objective(s)

The objectives of the examination are to:

- Identify financial institutions that are debt collectors
- Determine the adequacy of the financial institution's internal procedures and controls to assure compliance with the FDCPA
- Determine if the financial institution complies with the requirements of the FDCPA in collecting or attempting to collect third-party consumer debt

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DEFINITION(S)

Consumer

For purposes of communicating with a consumer or third party in connection with the collection of a debt, the term "consumer" is defined to include the borrower's spouse, parent (if the borrower is a minor), guardian, executor or administrator.

DEFINITION(S) (cont'd)

A debt collector is defined as any person who:

- Regularly collects, or attempts to collect, consumer debts for another person, or institution

Debt Collector

- Uses some name other than its own when collecting its own consumer debts

For example, that definition would include:

- An institution that regularly collects debts for an unrelated institution
- Reciprocal service arrangements where one institution solicits the help of another in collecting a defaulted debt from a customer who has moved

An institution is **not** a debt collector under the FDCPA when it collects:

- Another's debts in isolated instances
- Its own debts under its own name
- Debts it originated and then sold, but continues to service (for example, mortgage and student loans)
- Debts that were not in default when they were obtained
- Debts that were obtained as security for a commercial credit transaction (for example, accounts receivable financing)
- Debts incidental to a bona fide fiduciary relationship or escrow arrangement (for example, a debt held in the institution's trust department or mortgage loan escrow for taxes and insurance)
- Debts regularly collected for other institutions to which it is related by common ownership or corporate control

Debt collectors that are **not** covered also include:

- Officers or employees of an institution who collect debts owed to the institution in the institution's name
- Legal process servers

EXAMINATION PROCEDURES

Evaluate for Compliance with the FDCPA	
1.	Determine if the institution is a debt collector under the FDCPA. (803.(6))
2.	If the institution is determined to be a debt collector under the FDCPA, determine if internal procedures and controls have been established to assure compliance with the FDCPA. (804, 805, 806, 807, 808, 809, 810, 811, and 812)

**EXAMINATION
PROCEDURES
(cont'd)**

3. If the institution has acted or is acting as a debt collector under the FDCPA, determine if it has:
 - Communicated with the consumer or third parties in any prohibited manner
 - Furnished the written validation notice within the required time period and otherwise complied with applicable validation requirements
 - Used any harassing, abusive, unfair, or deceptive collection practices prohibited by the FDCPA
 - Collected any amount not expressly authorized by the agreement creating the debt or by state law
 - Applied all payments received as instructed, and where no instruction was given, applied payments only to undisputed debts
 - Filed suit in an authorized forum if the institution sued to collect the debt (804, 805, 806, 807, 808, 809, 810, 811, and 812)

**WORKPAPER
STANDARDS**

Appropriate workpapers or standardized workpapers must document all findings when reviewing compliance with the FDCPA. Refer to the Standardized Workpapers Appendix in this manual.



**FDIC LAW,
REGULATIONS,
& RELATED
ACTS**

Applicable Rules

Consumer Credit Protection Act, Volume 2, Page 6616.01
Federal Trade Commission Staff Commentary on the FDCPA, Volume 3, Page 8571

**Advisory
Opinions**

None

**Statements of
Policy**

None

**DCA
MEMORANDA**

Fair Debt Collection Practices Act, Transmittal No. DCA-97-020, dated 9/5/97

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

Amendment to the Fair Debt Collection Practices Act, Letter #26-97, dated 4/8/97
